DOCKET NO.: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J. D. OF NEW HAVEN
	:	
v.	:	AT NEW HAVEN
	:	
YESHIVA OF NEW HAVEN, INC.	:	JANUARY 20, 2022
FKA THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	

PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION (1) TO REOPEN JUDGMENT FOR PURPOSES OF EXTENDING THE LAW DAY AND (2) TO SUBSTITUTE BOND

The plaintiff, Eliyahu Mirlis ("Mr. Mirlis"), by and through his undersigned counsel, respectfully objects to the defendant's, Yeshiva of New Haven, Inc. fka The Gan, Inc, fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc. ("the "Yeshiva"), [Motion] (1) [to] Reopen Judgment for Purposes of Extending the Law Day and (2) to Substitute Bond (Doc. No. 153) (the "Motion to Open"). This motion, to once again forestall the foreclosure of a judgment lien on a commercial property that is worth a small fraction of the outstanding judgment amount, is part of a continuing and litigious effort by an entity controlled by a jailed pedophile who has baselessly delayed and continued to thwart the wheels of justice and to see the individual he harmed precluded from obtaining any justice. This Court should not countenance this farce and should see the Yeshiva's actions for what they are – dilatory, punitive, without remorse, and outrageous. The Court should not act on this motion before the law day and it is well within its discretion to decline to do so. Alternatively, it should deny the motion.

In June 2017, Mr. Mirlis was awarded a judgment of more than $21 million against the Yeshiva and Daniel Greer ("D. Greer"), jointly and severally (the "Final Judgment") to compensate him for the heinous sexual abuse he suffered at the hands of D. Greer while a student at a boarding school operated by the Yeshiva. Following the issuance of the Final Judgement, Mr.

Mirlis placed a judgment lien on real property owned by the Yeshiva in New Haven and commenced this action in July 2017 to foreclose that judgment lien. There is no question that the value of the subject property is substantially less than the amount of the Final Judgment. Yet, the Yeshiva stubbornly, inexplicably, and unsuccessfully appealed from this Court's March 2020 judgment of strict foreclosure (notably only appealing this Court's finding of value and not the judgment itself) but did not appeal an order resetting law days following the unsuccessful appeal and unsuccessful petition for certification. Nearly five years after this case was commenced, the Yeshiva, which is dominated and controlled by D. Greer who remains in prison for his conduct against the Mr. Mirlis, continues to thwart Mr. Mirlis's efforts to enforce the Final Judgment by filing yet another frivolous motion. The time has come for the Yeshiva and D. Greer to cease their ridiculous and obstructionist efforts to prevent Mr. Mirlis from realizing any justice or recovery on the Final Judgment, utilizing a cadre of lawyers to do his bidding. The Motion to Open should be denied, and, absent the Yeshiva paying the full amount of the Final Judgment, title should pass to Mr. Mirlis following the January 31, 2022, Law Day.

I. Relevant Factual and Procedural Background

While he was a minor student at a school operated by the Yeshiva, Mr. Mirlis was repeatedly sexually abused and assaulted by D. Greer, the Yeshiva's president and school principal. On June 6, 2017, following a jury trial in *Eliyahu Mirlis v. Daniel Greer et al.*, 3:16-cv-00678 (D. Conn.) (the "Underlying Action"), the Final Judgment issued in the amount of $21,749,041.10 against D. Greer and the Yeshiva. The Final Judgment was subsequently affirmed on appeal. *See Mirlis v. Greer*, 952 F.3d 36 (2d Cir., March 3, 2020). The Yeshiva and D. Greer, a Yale educated attorney, have gone to great lengths to ensure that Mr. Mirlis never recovers any of the millions of dollars owed to him, delaying and litigating any possible issue to avoid justice

finally being done. Mr. Mirlis has collected less than $240,000.00 from the Yeshiva and D. Greer since the entry of the Final Judgment, and then, only through executions and extensive litigation. In fact, D. Greer was convicted on multiple felony counts of risk of injury to a minor for repeatedly raping Mr. Mirlis and is currently incarcerated in state prison. Notwithstanding his incarceration, D. Greer continues to control and dominate the Yeshiva.

Mr. Mirlis commenced this foreclosure action on July 21, 2017, approximately four-and-a-half years ago, against the Yeshiva, seeking to foreclose the judgment lien (the "Judgment Lien") Mr. Mirlis recorded against property owned by the Yeshiva and located at 765 Elm Street, New Haven, Connecticut (the "Property"). Thus, this foreclosure action was brought pursuant to a judgment lien recorded on the Property in order to partially enforce the Final Judgment.

On November 8, 2017, Mr. Mirlis filed his Motion for Summary Judgment and supporting memorandum (Doc. Nos. 104, 105), which was granted as to liability by the Court on January 16, 2018 (Doc. No. 104.10). The Yeshiva did not object to the Motion for Summary Judgment, but rather, filed a Motion for Discharge of Judgment Lien on Substitution of Bond (Doc. No. 106) (the "First Motion to Substitute") on January 16, 2018, seeking to have the Court substitute a "cash bond for the Property in the amount of the fair market value of the Property[.]" (First Motion to Substitute, p.3.) The Yeshiva did not prosecute the First Motion to Substitute until a Motion for Judgment was filed by Mr. Mirlis.

On June 5, 2019, Mr. Mirlis filed his Motion for Judgment of Strict Foreclosure (Doc. No. 113) (the "Motion for Judgment") and an appraisal report of the Property. In response, the Yeshiva filed its (1) Objection to Motion for Judgment of Strict Foreclosure, (2) Motion to Discharge Judgment Lien and Substitute Bond, and (3) Motion to Continue hearing on Motion for Judgment of Strict Foreclosure (Doc. No. 115) (the "Objection and Second Motion to Substitute"), seeking,

inter alia, to have the Motion for Judgment denied because of a dispute as to the value of the Property and on account of the First Motion to Substitute. After being continued twice at the request of the Yeshiva and over Mr. Mirlis's objections, an evidentiary hearing regarding the Motion for Judgment and the value of the Property was held before the Court on October 28, 2019, and December 9, 2019. Each party called one witness, their respective expert appraisers, and submitted one exhibit, the reports of those appraisers. The parties then submitted their post-hearing briefs on January 27, 2020 (Doc. Nos. 131, 132).

On February 24, 2020, the Court issued its Memorandum of Decision: Hearing on Valuation (Doc. No. 133.00) (the "Valuation Decision"), *inter alia*, finding the value of the Property to be $620,000.00 based on the appraisals prepared in the second and third quarter of 2019, and permitting the Yeshiva at that time to substitute a bond for the Judgment Lien. The Yeshiva never attempted to substitute a bond.

On March 9, 2020 (almost two years ago), the Court entered a judgment of strict foreclosure (the "Foreclosure Judgment") against the Yeshiva, finding, *inter alia*, the amount of the debt to be $22,167,939.41 and the fair market value of the Property to be $620,000.00. The Court set a law day for June 1, 2020, for the Yeshiva, who is the owner of the equity of redemption. The Yeshiva did not oppose the entry of a judgment of strict foreclosure, appeal the Foreclosure Judgment, post a bond before Judgment entered or ask for additional time to post the bond before the Foreclosure Judgment entered. However, it subsequently filed an appeal of the Valuation Decision challenging the Court's valuation of the Property. The Appellate Court affirmed the Judgment of this Court on June 8, 2021. *See Mirlis v. Yeshiva of New Haven, Inc.*, 205 Conn. App. 206, AC 44016 (2021). The Yeshiva then filed a Petition for Certification with the Supreme Court which was denied on September 14, 2021. *See Mirlis v. Yeshiva of New Haven, Inc.*, PSC-200503.

After the Supreme Court denied certification, Mr. Mirlis filed the Motion to Reset Law Day after Appeal (Doc. No. 146) ("Motion to Reset"), asking the Court to set a new law day pursuant to Practice Book § 17-10.[1] Mr. Mirlis requested the shortest possible law day based on the myriad delays caused by the Yeshiva in this action.

In response to the Motion to Reset, on September 24, 2021, the Yeshiva filed its (1) Objection to Motion to Reset Law Days and Stay Proceedings and (2) Motion to Substitute Bond (Doc. No. 147) (the "Objection and Third Motion to Substitute"), seeking to have the Court deny the Motion to Reset and stay these proceedings while two motions were pending in the District Court. Specifically, the Yeshiva pointed to the pendency of the Motion to Modify Temporary Restraining Order (the "Motion to Modify", Doc. No. 69), filed in *Mirlis v. Edgewood Elm Housing, Inc.*, 3:19-cv-700 (D. Conn.) (the "Veil Piercing Action"), which is a reverse veil piercing action commenced against several nonprofit entities (the "Veil Piercing Defendants") dominated and controlled by D. Greer. Through the Motion to Modify, the Veil Piercing Defendants seek to have the District Court modify the TRO in two specific ways. First, they seek to allow the Veil Piercing Defendants to pay the legal fees and expenses of D. Greer and the Yeshiva even though all of those fees and expenses arise out of D. Greer's sexual abuse of Plaintiff and there is no legal, moral or even colorable basis to make those payments. Second, the Veil Piercing Defendants seek to modify the TRO so that the Veil Piercing Defendants can fund a cash bond to substitute for the Judgment Lien in this case. However, the Veil Piercing Defendants do not provide any evidence that they presently have sufficient funds to post a bond and suggest that they may need to sell real property to pay for the proposed bond. (Motion to Modify, p.3, n.2.)

[1] Practice Book § 17-10 provides "specific authority for the trial court to set new law days if the court's judgment is affirmed on appeal." *RAL Mgmt. v. Valley View Assocs.*, 278 Conn. 672, 684 (2006).

The second filing on which the Yeshiva relied was its and D. Greer's second motion to set aside the Final Judgment in the Underlying Action, filed on June 8, 2021 – more than a year after the Second Circuit affirmed the Final Judgment and almost five years after the Final Judgment entered (the "Second Motion to Set Aside"). The Second Motion to Set Aside is patently without merit, and does not seek to set aside the Final Judgment, but instead seeks an evidentiary hearing to test some implausible theory based on facts that were known to counsel and the District Court at the time of the trial in the Underlying Action. Indeed, the Second Motion to Aside is a classic fishing expedition through which the Yeshiva and D. Greer hope to find some basis to set aside the Final Judgment.

On October 7, 2021, Mr. Mirlis filed his (1) Reply in Further Support of Motion to Reset Law Day and (2) Objection to Motion to Substitute Bond (Doc. No. 149) (the "Reply and Objection"). Among other things, Mr. Mirlis argued in the Reply and Objection that the request for a stay of these proceedings was without any basis and that the Yeshiva was not entitled to substitute a bond for the Judgment Lien (even if its speculative funding sources came to fruition) because unambiguous and controlling Supreme Court precedent precluded the substitution of a bond after the Foreclosure Judgment had entered. After a hearing on October 25, 2021, the Court entered a judgment of strict foreclosure, with the only change from the Foreclosure Judgment being to set the law day for January 31, 2022. The Court did not grant the Objection and Third Motion to Substitute to the extent that it sought a stay or to substitute a bond. The Yeshiva did not move for articulation or reconsideration and did not appeal that judgment.

On January 14, 2022, the Yeshiva filed the Motion to Open, seeking an order opening the latest judgment of strict foreclosure and extending the law day to May 2, 2022, and for a fourth time, an order permitting it to substitute a bond for the Judgment Lien. Again, the Yeshiva relies

upon the pending Motion to Modify and Second Motion to Set Aside[2] as grounds for opening the judgment and extending the law day. In fact, the Yeshiva makes the same arguments that it made in the Objection and Third Motion to substitute, but now seeks even more time based on those same speculative arguments and knowing that the District Court has stated that it would rule on the Motion filed by the Veil-Piercing Defendants by January 21, 2022

II. Law and Argument

A. The Yeshiva's Rights to Post a Bond in Lieu of the Judgment Lien Ended Once the Foreclosure Judgment Entered under Supreme Court Precedent and That Judgment Was Not Appealed

Apart from the Yeshiva's practical inability to tender the funds needed to substitute a bond for the Judgment Lien on the Property after years of delay and the fact that it cannot rely on a valuation from years earlier to determine a bond amount now, it is beyond peradventure that after a judgment of strict foreclosure has entered, as occurred in this case, a defendant, like the Yeshiva, has lost the right to substitute a bond. *See Hartford Electric Light Co. v. Tucker*, 183 Conn. 85, 89-90 (1981). The Yeshiva's recycled argument that the Foreclosure Judgment should be opened, so that third-parties can possibly raise funds to substitute a potential bond, is therefore meritless. Indeed, the Yeshiva lost its right to post a bond in this action through inaction and waived any challenge to the Foreclosure Judgment. Thus, the Court should deny the Motion to Open.

Notably, the Yeshiva focuses on the remedy of *substitution* of collateral as opposed to the *redemption* of the underlying debt. However, the requirement that substitution of a bond for a lien must occur prior to the entry of a judgment is well-settled:

> While a putative debtor may have a constitutionally protected right to substitute a bond for a lien *before* there has been a judgment against him, he has no such right,

[2] The Second Motion to Set Aside has been fully briefed and was argued to the District Court on January 12, 2022. The Motion to Modify is fully briefed as well. The District Court has indicated that it will resolve any outstanding issues thereon by January 21, 2022, ten days before the present January 31, 2022, Law Day.

> under the cases and the statutes, *after* there has been a judgment, upon a hearing, affirming his indebtedness. Our statutes permitting dissolution of a lien upon the substitution of a bond are addressed, as were the statutes involved in the Supreme Court cases, to prejudgment liens. *See* General Statutes §§ 52-304 (attachment lien) and 49-37 (mechanic's lien).

Hartford Electric Light Co., 183 Conn. at 89-90.

As the Supreme Court correctly held, statutes authorizing the substitution of a bond to dissolve a lien are limited to "prejudgment liens". A debtor has the right to substitute a bond before judgment, and the Yeshiva had the same right in this case to substitute a bond before the entry of the Foreclosure Judgment, but it chose not to substitute a bond before the Foreclosure Judgment entered or to appeal the Foreclosure Judgment as part of its appeal of the Court's prior valuation of the Property. While it is untimely, even now, years after the Foreclosure Judgment entered and the valuation associated with the earlier bond request is past its expiration date, it is noted that the Yeshiva has never *actually* offered a bond.

The Yeshiva relies upon Conn. Gen. Stat. § 52-380e as authority to substitute a bond for a lien. Conn. Gen. Stat. § 52-380e provides:

> When a lien is placed on any real or personal property pursuant to section 52-355a or 52-380a, the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor which has an equal or greater net equity value than the amount secured by the lien. The court shall order such a discharge on notice to all interested parties and a determination after hearing of the sufficiency of the substitution. The judgment creditor shall release any lien so discharged by sending a release sufficient under section 52-380d by first class mail, postage prepaid, to the judgment debtor.

Section 52-380e was enacted approximately two years after the *Hartford Electric Light* decision, but the legislature was not working with a clean slate at the time of the statute's enactment and the legislature is presumed to know the state of the law, including judicial precedent, that required such bonds to be posted prior to judgment at the time the statute was enacted. *State v. King*, 249

Conn. 645, 682, 735 A.2d 267 (1999) ("The legislature is presumed to be aware and to have knowledge of all existing statutes and the effect which its own action or nonaction may have on them."); *State v. Barber*, 48 Conn. Supp. 127, 131 (2003) (*quoting State v. Dabkowski*, 199 Conn. 193, 201 (1986) ("'When the Legislature acts in a particular area, it does so with knowledge of and regard to the prior state of the law, including relevant decisions. . . . It is presumed to know the existing state of the case law in those areas in which it is legislating.'"). Indeed, the presumption that the legislature is aware of existing law at the time it legislates is a critical component statutory interpretation, the fundamental objective of which is to understand and give effect to legislative intent. *State v. Metz*, 230 Conn. 400, 409, 645 A.2d 965 (1994) ("In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.") (Citations omitted; internal quotation marks omitted.)

Hartford Electric was decided in 1981, approximately two years before the enactment of Conn. Gen. Stat. § 52-380e. *See* Pub. Act 83-581, S. 16, 40. Therefore, at the time that the statute was enacted the legislature was aware of and had knowledge of the law and judicial precedent from the Connecticut Supreme Court – specifically, that bond substitution statutes protect the right to substitute a bond for a lien *only before* judgment has entered. Notably, nothing within the text of Conn. Gen. Stat. § 52-380e suggests, let alone permits a judgment debtor to substitute a bond after the entry of a judgment in a foreclosure proceeding to enforce the lien relating to the underlying judgment. While the statute relates to substitution of a lien placed after a judgment has entered, the statute does not state that a judgment debtor is entitled to substitute the lien after the entry of a *subsequent* foreclosure judgment. When the legislature enacted what would be codified

as Conn. Gen. Stat. § 52-380e, it was aware of the limitation of bond substitution statutes as interpreted by the binding judicial precedent in the case law and did nothing to make that section an exception to the law.

In *Anthony Julian R.R. Constr. Co v. Mary Ellen Drive Assocs.*, Superior Court, judicial district of Ansonia-Milford, at Milford, Docket No. CV89 02 96 82, 1994 Conn. Super. LEXIS 2044, *3-*4 (Conn. Super., Aug. 16, 1994), the court denied an application by a mortgage holder to substitute a bond for a mechanic's lien after judgment of strict foreclosure had entered on the Mechanic's lien because *Hartford Electric* required that the application to substitute a bond be denied:

> A reading of *§ 49-37* indicates that the legislative intent was to enable the owner or any person 'interested' in the property to obtain a dissolution of the mechanic's lien so long as the lienor's rights are not prejudiced in doing so. *Six Carpenters,Inc. v. Beach Carpenters Corporation, 172 Conn. 1, 6, 372 A.2d 123,* (1976). . . . Nevertheless, the court believes that it must be guided by the language of now Chief Justice Peters, writing for a unanimous court in *Hartford Electric Light Co. v. Tucker, 183 Conn. 85, 89-90, 438 A.2d 828 (1981).*

The mechanic's lien bond substitution statute provides in relevant part:

> Whenever any mechanic's lien has been placed upon any real estate pursuant to sections 49-33, 49-34 and 49-35, the owner of that real estate, or any person interested in it, may make an application to any judge of the Superior Court that the lien be dissolved upon the substitution of a bond with surety, and the judge shall order reasonable notice to be given to the lienor of the application. . . . If the judge is satisfied that the applicant in good faith intends to contest the lien, he shall, if the applicant offers a bond, with sufficient surety, conditioned to pay to the lienor or his assigns such amount as a court of competent jurisdiction may adjudge to have been secured by the lien, with interest and costs, order the lien to be dissolved and such bond substituted for the lien and shall return the application, notice, order and bond to the clerk of the superior court for the judicial district wherein the lien is recorded; and, if the applicant, within ten days from such return, causes a copy of the order, certified by the clerk, to be recorded in the town clerk's office where the lien is recorded, the lien shall be dissolved. . . .

Conn. Gen. Stat. § 49-37(a). That statute is substantially similar to the statute permitting the substitution of a bond for a judgment lien. *See* Conn. Gen. Stat. § 52-380e. Thus, there is no

principled reason why the Court should not follow *Hartford Electric* as the Court in *Anthony Julian* did in the analogous case of a post-judgment substitution of a bond for a mechanic's lien.

B. <u>The Yeshiva Is Judicially Estopped from Claiming It Has a Right to Post-Judgment Substitution of a Bond and Has Waived Any Rights to Argue That It Should Have Been Allowed to Substitute a Bond before Entry of the Foreclosure Judgment</u>

The Yeshiva is judicially estopped from being able to seek a bond post judgment. It argued, inconsistent with the relief sought now, that any bond had to be substituted before the entry of judgment of strict foreclosure, which it relied on to successfully beseech the Court to allow substitution of a bond prior to entry of the Foreclosure Judgment.

To consider judicial estoppel, a court would generally look to "1) a party's later position is clearly inconsistent with its earlier position; 2) the party's former position has been adopted in some way by the court in the earlier proceeding; and 3) the party asserting the two positions would derive an unfair advantage against the party seeking estoppel". *Ass'n Res. V. Wall*, 298 Conn. 145, 168-70 (2010) (citations omitted). The Yeshiva forcefully asserted to the Court in its Objection and Second Motion to Substitute that it had to substitute a bond for the Judgment Lien ***before*** the Foreclosure Judgment entered. (Objection and Second Motion to Substitute, p.5) ("However, the Yeshiva is clearly allowed to avoid entry of a foreclosure judgment against it and discharge the underlying lien. Thus, adjudication of the Motion to Substitute ***must be decided prior to the Strict Foreclosure Motion***.") (Emphasis added). In reliance on the Yeshiva's admission and representation, the Court granted the earlier request of the Yeshiva to post a bond *prior* to the entry of the Foreclosure Judgment as implored by the Yeshiva. Of course, it never did nor did it appeal the Foreclosure Judgment. Now, as it must to create further delay, the Yeshiva takes the inconsistent position that it can still post a bond with funds it does not even have for a property that is worth substantially less under any valuation than the debt found in the Foreclosure

Judgment. Such an unfair advantage and inequitable result should not be considered and the dilatory and obstructionist actions of the judgment debtor should not be rewarded.

The Yeshiva, thus, is judicially estopped from arguing that it can substitute a bond after entry of judgment of strict foreclosure as that argument is contrary to the Yeshiva's clearly articulated prior position that the Motion to Substitute must be decided prior to the motion for strict foreclosure. The Court adopted the Yeshiva's position in granting its motion to post a bond prior to entry of the Foreclosure Judgment - the exact sequence that the Yeshiva argued was required. The Yeshiva would derive an unfair advantage by changing its position now and obtaining the benefit of substituting a bond in an amount based on a significantly aged valuation that undervalues the Property.

C. Because It Did Not Appeal the Foreclosure Judgment, The Yeshiva Has Lost the Right to Post a Bond

Despite its knowledge of the settled law, the Yeshiva never sought to substitute a bond for the Judgment Lien before entry of judgment of strict foreclosure or appeal the Foreclosure Judgment (or even the latest judgment), and continues to admit that it has no idea whether it could even do so if the law did not preclude the substitution of a bond at this late stage of the proceedings.

Moreover, and significantly, when the Yeshiva appealed the valuation determination, it did not appeal the entry of the Foreclosure Judgment. In fact, it did not even object to the entry of judgment in the first place or challenge the timing or other matters associated with the bond. Thus, as the Appellate Court noted, the Yeshiva waived any right to argue that the Foreclosure Judgment should not have entered because it failed to properly raise that argument:

> We are compelled to note that, in its principal appellate brief, the defendant also argues that this court "should reverse the foreclosure judgment," stating in full: "Since the defendant has an absolute right to substitute a bond in lieu of the judgment lien, the foreclosure judgment should not have entered. . . . The plaintiff did not appeal this decision of the trial court." (Citation omitted.) The defendant

> has provided neither legal authority nor analysis to substantiate that bald assertion. "[Our Supreme Court] repeatedly [has] stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." . . . We therefore decline to review that abstract assertion.

Mirlis, 205 Conn. App. at 212 (citations omitted). The Yeshiva had its chance to challenge the entry of the Foreclosure Judgment, but it failed to do so. It thus cannot now complain that its right to substitute a bond has terminated as a result of the entry of the Foreclosure Judgment.

Following an appeal affirming a judgment, judgment so affirmed is effective retroactive to the date of entry by the trial court. *Callahan v. Callahan*, 192 Conn. App. 634, 663 (2019). "[I]f the trial court's judgment is sustained, or the appeal dismissed, the final judgment ordinarily is that of the trial court." *Id.* Thus, because the Foreclosure Judgment of this Court was affirmed on appeal, that is the operative final judgment in this case – as partially modified by the extension of the law day to January 31, 2022. The Yeshiva failed to appeal, or even oppose, the entry of the Foreclosure Judgment, and it never substituted a bond for the Judgment Lien before the Foreclosure Judgment entered, despite the fact that it first identified its intention to do so in the First Motion to Substitute filed on January 16, 2018, and knew that it had to do so prior to the entry of the Foreclosure Judgment. Therefore, the Yeshiva cannot substitute a bond because the Foreclosure Judgment is final and not subject to further appeal.

D. The Law Does Not and Should Not Permit a Judgment Debtor to Substitute a Bond for a Judgment Lien After Entry of Judgment of Strict Foreclosure Because Doing So Is Inequitable and Would Create a Never-Ending Foreclosure Litigation Loop, Thereby Rendering Judgment Liens Worthless

The requirement that substitution of a bond must occur prior to the entry of a foreclosure judgment is consistent with the realities and equities of the judicial process and makes perfect sense. Again and notably, the Yeshiva does not seek to redeem the Property by paying the debt determined in the Foreclosure Judgment in full. Moreover, the Yeshiva does not seek to post a

bond in an amount equal to the present value of the Property, has never provided proof that it presently has sufficient funds to post a bond or tender proof of a bond, and did not appeal the entry of the Foreclosure Judgement and that judgment is final.

In this case, the Yeshiva was granted leave to substitute a bond contemporaneously with the Court's determination of value of the Property years earlier and prior to the entry of the Foreclosure Judgment. The fair market value determination was made by the Court in reliance on expert appraisal reports and testimony submitted to the Court in **2019**. Allowing the Yeshiva to delay Mr. Mirlis's foreclosure action for years, and then substitute a bond based on a value determined years earlier, not the increased value of the Property at the time of the substitution, is wholly contrary to the *Tucker* Rule as set forth above, contrary to equitable principles, and further supports the rule that a bond must be substituted close in time to the Court's determination of value, *i.e.*, before judgment of strict foreclosure enters.

Accepting the Yeshiva's argument that a bond can be substituted at any time before title passes would result in perverse consequences and create an endless knot or infinite loop of litigation. Indeed, two related and equally vexing problems would arise. First, the Valuation Decision, finding the value of the Property to be $620,000.00, issued nearly two years ago, on February 24, 2020, and was based on appraisals from mid-2019. A two year old value based on two-and-a-half year old appraisals does not provide an accurate reflection of the current value of the Property, and a bond in that amount would not adequately compensate Mr. Mirlis for the value of the Judgment Lien as required by Connecticut Law. *See* Conn. Gen. Stat. § 52-380e (". . . the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor ***which has an equal or greater net equity value than the amount secured by the lien***.") (emphasis added). This very real problem

of aged appraisals, which do not represent the present value of a property, is recognized in the context of deficiency judgments where the foreclosure appraisal is irrelevant and the value of the subject property must be determined at the time that title vests in the plaintiff. *See First Fed. Bank v. Gallup*, 51 Conn. App. 39, 42-43 (1998) (holding that trial court erred in considering appraisal valuing property fifteen (15) months prior to title vesting).

Simply permitting another valuation determination of commercial property after an appeal would lead to the second related problem with permitting substitution of a bond after judgment has entered – a potentially endless loop of revaluations and appeals. If the Court were to permit substituting a bond after judgment and after the delay caused by an appeal, equity, fairness and Conn. Gen. Stat. § 52-380e would require that current value of the Property be determined once again in order to determine the amount of the bond for an adequate substitution. If either party did not agree with the Court's finding of value, it presumably could (and in the Yeshiva's case, would) appeal that decision. Then, no matter the outcome of the appeal, the Property would have to be revalued, and a subsequent appeal could be taken. It is easy to see that this process could continue *ad infinitum*. Not only would it short circuit the foreclosure proceeding with an infinite loop, but it would effectively delay or eliminate the most basic remedy of a judgment creditor. Consistent with the truism that justice delayed is just denied, this Court should not countenance such a perverse and inequitable outcome that encourages endless litigation on the part of judgment debtors. Indeed, the Yeshiva has amply demonstrated that it will use repeated filings, many of them meritless, to delay the inevitable in this action – the latest being the Motion to Open. Mr. Mirlis continues to be prejudiced as he has not been able to take title to the Property to partially satisfy the Final Judgment well more than four years after it entered. The Court should thus deny the Motion to Open.

E. The Court Should Either Not Act on the Motion to Open Before the Law Day or Alternatively, Deny the Motion to Open Because Good Cause Does Not Exist to Open the Judgment of Strict Foreclosure

The Yeshiva seeks to open the Foreclosure Judgment pursuant to Conn. Gen. Stat. § 49-15. Thus, it must satisfy four requirements: "(1) that the motion be in writing; (2) that the movant be a person having an interest in the property; (3) that the motion be acted upon before an encumbrancer has acquired title; and (4) that 'cause,' obviously good cause, be shown for opening the judgment." *Farmers & Mechs. Sav. Bank v. Sullivan*, 216 Conn. 341, 352-53 (1990). "[G]ood cause for opening a [judgment] pursuant to § 49-15 . . . cannot rest entirely upon a showing that the original foreclosure judgment was erroneous. Otherwise that statute would serve merely as a device for extending the time to appeal from the judgment." *USAA Fed. Sav. Bank v. Gianetti*, 197 Conn. App. 814, 820 (2020) (quotation marks and citations omitted).

The Yeshiva has not and cannot demonstrate good cause to open the Foreclosure Judgment and extend the law day. The sole stated purpose for opening the Foreclosure Judgment is to substitute a bond for the Judgment Lien – *i.e.*, to tender the value of the Judgment Lien of $620,000.00.[3] Mr. Mirlis believes that the value of the Property has been beneficially impacted by the recent activity of the hot Connecticut real estate market and its value has significantly increased. In the unlikely event that the Court were to permit a bond, he reserves all his rights to request that the Court conduct a hearing to determine the present value of the Property and to challenge that the prior Court finding of value in the amount of $620,000.00 from two years ago premised on appraisals from almost three years ago is the appropriate amount of a bond to substitute for the Judgment Lien. The Yeshiva may not, however, substitute a bond for the Judgment Lien after judgment has entered. Indeed, through its pending motion the Yeshiva seeks,

[3] Mr. Mirlis reserves all his rights to challenge that $620,00.00 is the appropriate amount to substitute for the Judgment Lien, including to request that a new valuation be determined.

for the second time, to revisit its failure to substitute a bond prior to the entry of the Foreclosure Judgment, and to then appeal the entry of that judgment. For this reason alone, the Motion to Open should be denied.

Even assuming *arguendo* that a Court could permit the posting of a bond after the Foreclosure Judgment entered, which Mr. Mirlis respectfully submits would be an abuse of discretion, the Yeshiva lacks any resources to post a bond and has provided nothing other than abject speculation for funding more than two years after the Foreclosure Judgment entered. It does not have the necessary resources to substitute a bond, and will not immediately have those resources even if the Motion to Modify is granted in the District Court. Indeed, the Veil Piercing Defendants, who presumably would transfer funds to the Yeshiva to substitute a bond, have admitted in the Motion to Modify that they would likely have to sell real property to fund the payment of the bond. (Motion to Modify, p.3 n.2.)

The TRO was entered on August 25, 2020, more than five months after this Court's February 24, 2020, order finding value and permitting the substitution of a bond. (*See* Valuation Decision.) The Veil Piercing Defendants waited more than a year, until after the Motion to Reset was filed, to even seek to modify the TRO. The Yeshiva seeks to use that delay to its advantage and now asks this Court to permit it an unspecified amount of time for the Veil Piercing Defendants to possibly obtain relief from the TRO, and then, even more time to sell real property to raise funds.

The Yeshiva lost its right to seek to substitute the Judgment Lien with a cash bond, and even assuming, *arguendo*, that it did not, it provides no basis for the Court (or anyone else) to believe it has more than a speculative hope of providing a bond at some unspecified future time. The Court should not countenance such blatant attempts to further frustrate collection of the now

more than four-year-old Final Judgment. The Yeshiva has had its day in court (many times over), and it is now time for this action to be concluded and for title to vest in Mr. Mirlis. Thus, the Motion to Open should be denied.

Likewise, the baseless Second Motion to Set Aside does not provide a basis for further delay. Indeed, if the Yeshiva truly believed that the Second Motion to Set Aside had any merit whatsoever it would have sought a stay of enforcement of the Final Judgment with the District Court as such a stay would preclude the Mr. Mirlis from foreclosing on his judgment lien. *See* Fed. R. Civ. P. 62(b) ("At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security."). The fact that the Yeshiva did not seek a stay of the Judgment with the District Court is telling.

The pendency of the Second Motion to Set Aside is an obvious red herring that the Yeshiva throws in as it desperately attempts to obfuscate and throw any stumbling block it can in the Court's and Mr. Mirlis' way to prevent some modicum of justice occurring. That motion does nothing to does nothing to impact this proceeding or the enforcement of the federal court judgment, which remains final and enforceable. For informational purposes in the event the Court was nonetheless curious, the primary basis of the Second Motion to Set Aside is the false contention that Mr. Mirlis's trial counsel in the Underlying Action had an undisclosed agreement with an individual named Avid Hack whereby Mr. Hack would testify at a deposition but would not appear and testify at trial. In November 2021, D. Greer filed a Petition for a New Trial in Superior Court seeking a new trial on the criminal charges related to his abuse of Mr. Mirlis for which he was convicted and is presently serving a 12-year sentence. D. Greer's petition for a new trial relies on the affidavit of Avid Hack who states in his affidavit that he did not appear as a witness in the trial

of the Underlying Action because he "successfully avoided efforts by counsel for all parties to serve [him] with papers requiring [his] appearance at trial." *Daniel Greer v. State of Connecticut*, NNH-CV21-6119016-S, Affidavit of Avid S. Hack, sworn to October 29, 2021, at ¶10.[4] Moreover, D. Greer's petition describes the efforts undertaken by process servers retained by both parties in the Underlying Action to serve Mr. Hack with a trial subpoena, and attaches the returns of service detailing Mr. Hack's efforts to avoid service, including in one instance Mr. Hack running out of the school building in which he was employed, and leaving behind a classroom full of students to avoid service. *Id.*, Petition, at ¶¶21-24.

The Yeshiva and D. Greer did not advise the District Court of the Petition for New Trial, the Hack Affidavit, or the allegation that "[c]ounsel for [Mr. Mirlis] and counsel for petitioner defendant/Greer issued subpoenas for [Hack's] appearance, and attempted to have him served so he could appear as a trial witness. Hack took extensive, repeated efforts to make himself unavailable as a witness, and to evade repeated attempts at service of process." *Id.*, at ¶21. Instead, they led the District Court to believe that Mr. Mirlis's counsel did nothing to secure Mr. Hack's trial testimony in furtherance of the non-existent agreement between them because they are desperate to get D. Greer out of prison and to avoid Mr. Mirlis's enforcement of the Final Judgment, and will do anything to achieve those goals, including making whatever filings are necessary to delay the completion of this action in perpetuity.

Plaintiff is fully aware, of course, it is the District Court, rather than this Court, that must adjudicate both the Motion to Modify and the Second Motion to Set Aside. The issue for this Court is whether it will permit the Yeshiva to hold this action hostage by staying it in response to a motion filed to modify a TRO that entered more than a year-ago and a motion to set aside the Final

[4] A complete copy of D. Greer's Petition for New Trial with Exhibits is attached hereto as **Exhibit A**.

Judgment that entered well-more than four years ago or permit the Yeshiva to delay any justice to the victim of horrific sexual abuse for which a jury has determined it bears responsibility. At some point, Mr. Mirlis must be allowed to enforce his Judgment, and that point is now. Thus, for the reasons already discussed, the Court should deny the Motion to Open.

III. Conclusion

WHEREFORE, Mr. Mirlis respectfully requests that the Court deny the Motion to Open, and grant him such other and further relief as justice requires.

THE PLAINTIFF
ELIYAHU MIRLIS

By: */s/ John L. Cesaroni*
Matthew K. Beatman
James M. Moriarty
John L. Cesaroni
ZEISLER & ZEISLER, P.C.
10 Middle Street
15th Floor
Bridgeport, Connecticut 06604
(203) 368-4234
jcesaroni@zeislaw.com
His Attorneys

CERTIFICATION OF SERVICE

This is to certify that service of copies of this Plaintiff's Objection to Defendant's Motion (1) to Reopen for Purposes of Extending the Law Day and (2) to Substitute Bond was made via electronic mail on the following appearing defendants and counsel of record in both of the above-captioned consolidated actions:

Jeffrey M. Sklarz
Green & Sklarz LLC
700 State Street
Suite 100
New Haven, CT 06511
jsklarz@gs-lawfirm.com

Date: January 20, 2022

/s/ John L. Cesaroni
John L. Cesaroni

EXHIBIT A

RETURN DATE: NOVEMBER 23, 2021

DANIEL GREER	:	SUPERIOR COURT
	:	
v.	:	J.D. OF NEW HAVEN
	:	AT NEW HAVEN
STATE OF CONNECTICUT	:	NOVEMBER 12, 2021

PETITION FOR NEW TRIAL

The petitioner, DANIEL GREER, through undersigned counsel, respectfully petitions this court for a new trial in the case of State of Connecticut v. Daniel Greer, Docket No. NNH-CR17-0177934-T (J.D. of New Haven). This petition for new trial is made in the interests of justice, and is brought pursuant to Conn. Gen. Stat. § 52-270; Practice Book § 42-55; the Fourteenth Amendment to the United States Constitution; and Article First, §8, §9, §10 and §20 of the Connecticut Constitution.

Nature and History of the Proceedings

1. Petitioner Daniel Greer was arrested by warrant on July 26, 2017, and changed with sexual assault in the second degree, in violation of Conn. Gen. Stat. § 53a-21(a)(2), and risk of injury to a child, in violation of Conn. Gen. Stat. § 53-21(a)(2). The ultimate charging documents in the case - long-form informations - were filed on September 16, 2019, and September 20, 2019. Defendant was charged with four counts of each offense.

2. The alleged victim in each count was identified as "EM". The general allegation underlying all charges was that petitioner, an orthodox rabbi who ran a Yeshiva in New Haven, had sexually assaulted EM while he was a student at the school. The conduct was alleged to have occurred in 2002 and 2003, when EM was 14-15 years of age. All criminal conduct was alleged to have occurred prior to EM's 16th birthday, on October 27, 2003.

3. The case was tried in the Judicial District of New Haven before the Honorable Jon M. Alander. Jury selection was held between August 19-26, and trial evidence was presented between September 16-23, 2019.

4. On September 23, 2019, at the conclusion of all evidence, Judge Alander granted the defendant's motion for judgment of acquittal on the four counts of sexual assault in the second degree, because they were barred by the applicable statute of limitations.

5. Jury deliberations began on September 24th, and concluded on September 25th, when the jury convicted petitioner of all four counts of risk of injury. On December 2, 2019, the court imposed a total effective sentence of 20 years, execution suspended after 12 years, and 10 years probation.

6. Petitioner appealed his conviction to the Appellate Court, and the appeal remains pending there, under docket No. A.C. 43726. The State of Connecticut recently filed its Appellee's brief. Petitioner is currently incarcerated pending appeal.

Relevant Evidence At Petitioner's Trial

7. The evidence at trial showed that for many years the petitioner served as a dean and rabbi at the Yeshiva of New Haven, Inc., a school that he founded. EM attended the Yeshiva for four years of high school, from 2001 through 2005. 2T 74[1]. EM claimed that he and the defendant had a sexual relationship that began in the fall of 2002 (shortly before his 15th birthday) and continued until 2006 (when EM was 18 years old).

8. EM first made a complaint to the police in 2016, when he was 28 years old.

9. All of the charges lodged against the petitioner had the same "age" element, i.e., the victim must be under sixteen years of age, which means that if any sexual activity had

[1] Citations refer to the day of the trial transcript, and to the page of that day's testimony.

occurred on or after EM's 16th birthday (Oct. 27, 2003), it was lawful. The petitioner's guilt or innocence thus rested not only on the *truthfulness* of EM's testimony as to *what* had occurred, but also on the *accuracy* of his testimony as to *when* certain events occurred.

10. Questions regarding timing, and timeline, were raised during petitioner's trial. For instance, EM testified that he and the defendant engaged in a sex act at the defendant's home while defendant was recuperating there from hernia surgery. 1T 237-39;2T 34,154-56. When asked on direct examination in what year that occurred, EM said, "I think it was my *junior* year." (Emphasis added.) 1T 237-38. When cross-examined about that same incident, he testified, "I thought it was in my *sophomore* year, but - - . . . a lot of those years *have meshed together*." (Emphasis added.) 2T 154-55. When confronted with hospital records (Def. Ex. R) showing that the defendant's hernia surgery took place on February 14, 2005, EM admitted, "it was my *senior* year" (when he was 17 years old). (Emphasis added.) 2T 156-57. See also 1T 195 (EM admitted that because the sexual encounters occurred "over the course of those three years, four years, . . . the encounters *meld together* in that sense"). (Emphasis added.)

11. Prior to filing his criminal complaint, EM had filed a federal civil lawsuit ("the civil case") against petitioner and the Yeshiva, seeking to recover damages for alleged sexual abuse. (EM) v. Greer, et al., 3:16-CV-678 (KAD) (D. of CT).[2] That case was tried in May 2017. Petitioner invoked his Fifth Amendment privilege at trial in response to questions about alleged sexual abuse. The jury returned a verdict in favor of EM, and a civil judgment ultimately entered in excess of $20 million.

[2] EM initiated the federal lawsuit using his full name; however, for purposes of this Petition, we follow the practice used in the ongoing appeal, and substitute his initials.

12. The defense at petitioner's trial cross-examined EM about the prior civil litigation, his efforts to collect money from petitioner, and his motivations in pursuing the criminal charges. The defense also elicited substantial evidence about EM's ongoing, voluntary relationship with petitioner following his graduation from high school. This included having petitioner serve as one of the two witnesses at his 2007 wedding, a position of great honor in the orthodox Jewish faith.

13. Evidence was also presented that while living primarily in New York and New Jersey, EM and his wife traveled to New Haven about six times each year for high holy day services or to celebrate the Sabbath. 1T 187-88,193;2 T5,199-208;3T 89,92,130-32,141-42. On those trips they interacted with the petitioner, sometimes shared holiday or Sabbath meals at his home, and attended services that he conducted. 2T 5-6,203-07;3T 92-93,97,131-32.

14. When EM and his wife had their first child, they asked petitioner to hold the baby during both the circumcision and naming ceremonies. A defense witness – an orthodox rabbi – testified that this is a significant honor, as is being asked to serve as one of the two witnesses at a wedding.

15. Other evidence at trial focused on the accuracy, and credibility, of EM's timeline of events. The defense presented testimony from Rosalyn Gettinger, the widow of the Yeshiva's former headmaster. Her deposition and affidavit indicated that in the early 2000s, she and her husband lived in New York City but came to New Haven weekly because they both taught at the Yeshiva. 2T 52-54,260;4T 216,237-40;5T 8,147-48,161. They usually stayed in New Haven from Monday through Wednesday nights, returning to New York on Thursday night, but occasionally stayed in New Haven for a full week. 5T7; Def.Ex.Z-1. They initially lived in an apartment at 786 Elm Street, but starting in the 2000-2001 academic year, and continuing

through the 2002-2003 academic year, they occupied a first-floor apartment at 777 Elm Street. 5T 7-8. EM had testified that his first sexual encounter with petitioner had occurred in that apartment in the fall of 2002; the Gettinger testimony was intended to rebut that claim.

16. Jean Ledbury, the secretary of the Yeshiva, confirmed that the Gettingers lived in the first floor apartment at 777 Elm Street when they were in New Haven during the 2002-2003 school year. 5T 113-19,160.

17. The jury in the criminal case asked several questions during deliberations relating to the timeline of various relevant events. Thomas DeRosa, a former math and science teacher at the Yeshiva, had testified about disruptive and troubling behavior by EM while he was one of his students. 6T 13-18. The jury submitted 3 separate questions over its 2 days of deliberations asking about the dates DeRosa worked at the school. See Ex. 1 (Court Exhibits 8, 9, 10).

Potential Testimony From Aviad Hack, and Hack's History of Unavailability

18. During EM's years as a student at the Yeshiva, Aviad Hack served as the Assistant Principal at the Yeshiva. Hack was a former student at the Yeshiva, having attended the school with petitioner's oldest child. He worked for the Yeshiva for more than 20 years, including the time EM attended school there.

19. Hack is currently a resident of Rhode Island, and has been since approximately 2017. Hack did not testify at petitioner's criminal trial.

20. Hack had testified at a deposition in the civil case. In that deposition testimony, he indicated he was aware of sexual misconduct by petitioner toward EM while EM was a student at the Yeshiva. He stated that his knowledge was based, at least in part, on statements made to him by Daniel Greer. He was not specifically asked whether this alleged conduct occurred before or after EM's 16th birthday.

21. The civil case was tried in May 2017 in United States District Court in Bridgeport. Counsel for EM and counsel for petitioner/defendant Greer issued subpoenas for his appearance, and attempted to have him served so he could appear as a trial witness. Hack took extensive, repeated efforts to make himself unavailable as a witness, and to evade repeated attempts at service of process.

22. For instance, Rhode Island Constable Robert J. Kilduff stated in an affidavit that he was engaged in May 2017 to attempt service of a trial subpoena on Hack. He recalled the engagement because of the "great lengths to which Mr. Hack went to avoid service and the amount of time I spent trying to serve him". See generally Ex. 2.

23. Constable Kilduff further indicated that his efforts included a visit to Hack's place of employment, a school. After visiting the school office, he continued to the school hallway, looking for Mr. Hack. Mr. Hack saw him coming and ran from his classroom, down a hallway and out of the school, leaving behind a classroom full of students. Ex. 2, ¶ 5. During later efforts at the school he was told by school officials that Mr. Hack "had called in sick for two weeks". Ex. 2, ¶ 6. Efforts to serve him at his home or place of worship were similarly unavailing.

24. Several other officials also attempted, and failed, to effect service of civil trial subpoenas on Hack. They documented their efforts to serve Hack, and Hack's repeated efforts to evade service, in sworn affidavits and/or proofs of (non)-service. See Ex. 3 (Affidavits or returns from Constables Paul Hughes; Robert J. Kilduff; Kenneth M. Vieira; Connecticut State Marshal Robert S. Miller).

25. The federal court ultimately found Hack to be an "unavailable witness". Based on that finding, EM offered into evidence at the civil trial portions of Hack's deposition testimony.

26. Prior to jury selection in the 2019 criminal trial, the State listed Hack as one of its planned witnesses, and stated its intention to call him at trial.

27. The State later issued an interstate subpoena, seeking to compel him to appear in Connecticut as a witness.

28. On the first day of trial, shortly before the start of evidence, the State represented to the Court that it had made multiple, unsuccessful attempts to serve Hack over the course of approximately one week – principally at the school where he worked, and at his home. The State argued that he was unavailable; the defense did not question this characterization.

29. The State then argued that, based on Hack's unavailability, it should be permitted to introduce his deposition given in the civil matter. Petitioner's counsel argued against allowing the deposition to be offered at the criminal trial. The Court ruled that if Hack was unavailable as a trial witness, it would not allow the State to offer his deposition.

The Newly-Discovered Evidence

30. In support of his petition for new trial, petitioner is prepared to offer the testimony of Aviad Hack concerning the events at issue in the criminal case. Aviad Hack's affidavit, dated October 29, 2021, is attached as Ex. 4[3].

31. Hack's testimony is expected to be as set forth in his affidavit. Specifically, he indicates that he is familiar with EM, who was a student at the Yeshiva of New Haven from the fall of 2001 to the spring of 2005. During this time, Hack was the Assistant Principal at the Yeshiva.

---

[3] The original affidavit has been redacted to remove EM's name, and substitute his initials, consistent with the convention followed in this pleading. Petitioner will file the unredacted original under seal if the Court wishes. As noted, EM voluntarily used his name as a plaintiff in the federal court matter.

32. Hack also served as the dorm counsel for EM and other high school boys, continuing in that role for many years, up until Hack's marriage in August 2004. He lived with the boys, observed them, and interacted with them regularly. One of his responsibilities was to monitor their activity, including comings and goings from their residence.

33. During this time, Hack also met regularly with the petitioner, who was head of the Yeshiva, generally each evening, to discuss matters relating to the Yeshiva and the students.

34. Hack acknowledges that he was not asked in his civil deposition whether there was any misconduct by petitioner toward EM prior to EM's 16th birthday. He states that he successfully avoided service of process by both parties for appearance as a witness in the civil trial in May 2017, and also for the criminal trial in the fall of 2019.

35. He states in his affidavit that he now wishes to share his knowledge of relevant events, and is now willing to testify in support of his affidavit. Specifically, he affirms in his affidavit that, to his knowledge, no acts of misconduct by petitioner toward EM occurred prior to EM's 16th birthday.

36. This information squarely undercuts one of the required elements of the charges against petitioner – that misconduct occurred prior to EM's 16th birthday.

37. The information described in Paragraphs 30-35 above is newly-discovered evidence, in that it was not available to the petitioner or his counsel at the time of trial, and could not have been discovered with due diligence; it would be material on a new trial to the issue of petitioner's guilt or innocence; it is not merely cumulative; and is likely to produce a different result at a new trial.

38. The jury verdict resulted in petitioner Daniel Greer suffering an injustice.

39. For the foregoing reasons, petitioner should be granted a new trial on the grounds of newly discovered evidence, under General Statutes Section 52-270; Practice Book Section 42-55; applicable provisions of the United States and Connecticut Constitutions; or, in the alternative, for any other reasonable cause.

WHEREFORE, the Petitioner requests the following relief:

1. An evidentiary hearing;

2. A new trial; and

3. Such other and further relief as this Court deems just or equitable.

THE PETITIONER
DANIEL GREER

By: 

David T. Grudberg
Carmody Torrance Sandak & Hennessey LLP
195 Church Street, 18th Floor
P.O. Box 1950
New Haven, CT 06509-1950
Phone #: 203-777-5501
Fax #: 203-784-3199
Firm Juris #: 012592
dgrudberg@carmodylaw.com

His Attorneys

EXHIBIT 1

What year(s) did DeRosa teach @ Nt Yashiva?

Can we hear Eli's testimony involving Relationship w/ DeRosa?

In Re Rosa's testimony
When she state that
he got laid off from job
and offered to work at
Yeshiva ~~which is~~ this testimony.
#

9/24/2019

What years did De Risa work at the Yeshiva?

Nina Titus

EXHIBIT 2

Affidavit of Robert J. Kilduff

1. I, Robert J. Kilduff, am over the age of 18 and believe in the obligations of an oath.
2. I am a licensed Constable and an experienced process server in the state of Rhode Island. I have served in this capacity for 30 years.
3. In May of 2017, I was engaged by Carmody, Torrance Sandak & Hennessey LLP to attempt service of a subpoena on Aviad Hack. This engagement stands out in my mind because of the great lengths to which Mr. Hack went to avoid service and the amount of time I spent trying to serve him.
4. Over the course of several days, Mr. Hack continually evaded my attempts to serve him.
5. I first attempted service at his place of employment, which was a school. The first time I attempted service at the school, I went into the main office and announced that I was there to serve Mr. Hack. The principal called Mr. Hack and asked if he would come to the office to meet me, but Mr. Hack refused. I then explored the school hallway in the hopes of finding Mr. Hack's classroom. When Mr. Hack saw me coming, he ran out of his classroom, down the hallway away from me, and out the back door of the school, leaving behind a classroom full of students.
6. The second time I attempted service at the school, I arrived at 7:00 am in the hopes of observing Mr. Hack as he entered the school for the school day. I brought with me another process server who I stationed at the back door of the school. Together we surveilled the school for hours but never saw Mr. Hack. I was later informed by a school official that Mr. Hack had "called in sick for two weeks."
7. I then surveilled the entrance to a synagogue that I was told Mr. Hack might attend but I was unable to locate him. I next surveilled his residence from my vehicle for many hours, but Mr. Hack stayed out of sight and did not come or go.

8. I also located and surveilled another residential property outside of the city of Providence believed to be owned by Mr. Hack, but could not find him there.
9. In all, I spent more than 8 hours attempting service on Mr. Hack at four different locations. On each occasion, Mr. Hack evaded service.

SWORN UNDER PENALTY OF PERJURY THIS 4th DAY OF DECEMBER, 2017.

ROBERT J. KILDUFF

Subscribed and affirmed before me this 4th day of December, 2017.

Notary Public

TIMOTHY J. DONOVAN
Notary Public – Rhode Island
Notary ID 60894
My Commission Expires Aug 17, 2019

(N5422709)

EXHIBIT 3

AFFIDAVIT OF NON-SERVICE

State of Connecticut **County of** **U.S. District Court**

Case Number: 3:16-CV-00678 (MPS) Court Date: 5/10/2017 10.00 am

Plaintiff:
ELIYAHU MIRLIS

vs.

Defendant:
DANIEL GREER, ET AL

For:
Amanda C. Harvey
CARMODY & TORRANCE LLP
195 Church St.
P.O. Box 1950
New Haven, CT 06509

Received by HUGHES LEGAL SUPPORT on the 1st day of May, 2017 at 12:54 pm to be served on AVIAD HACK, 66 SARGENT AVE, PROVIDENCE, RI 02906.

I, Paul G. Hughes, being duly sworn, depose and say that on the 3rd day of May, 2017 at 5:58 pm, I:

DISCONTINUED ATTEMPTING SERVICE of the SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION, SCHEDULE A AND WITNESS FEE for the reasons detailed in the comments below.

Additional Information pertaining to this Service:
5/2/2017 11:30 am Attempted service at 66 SARGENT AVE, PROVIDENCE, RI 02906, ...no answer....RI tag "LZ 499" in driveway...
5/2/2017 12:00 pm Attempted service at 77 BLODGETT PAWTUCKET RI .....white single family house....no answer
5/1/2017 12:57 pm ....MONDAY.....attempted service.....Street is Sargent Ave, Not Sargent Dr...no 66 Sargent.... 64 is a single family..no answer @ 64...note left at 64
5/2/2017 4:42 pm Attempted service at 66 SARGENT AVE, PROVIDENCE, RI 02906, ...Gray TOYOTA. RI TAG "OUTPUT". .....woman and child emptying car of cardboard boxes.....when asked this woman stated that she did not know when AVIAD HACK would be home.....I identified myself with my business card and ask if she was AVIAD's wife.....she responded that she would not answer any questions

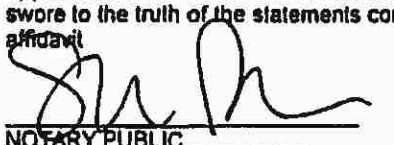
I certify that I am a Rhode Island Constable licensed to serve civil process in the state of Rhode Island. I am a citizen of the US, over the age of eighteen years and I am not a party to, nor do I have any interest in the above action. Under penalties of perjury, I declare that I have read the foregoing instrument and the facts stated in it are true.

Paul G. Hughes
RI Superior Ct Constable # 40

HUGHES LEGAL SUPPORT
P.O. Box 20617
Cranston, RI 02920
(401) 944-8980

Our Job Serial Number: HLS-2017011213

Before me on the 4th day of May, 2017 there personally appeared before me the above named individual who swore to the truth of the statements contained in this affidavit



NOTARY PUBLIC
STEPHANIE PAOLINO
NOTARY PUBLIC ID 60253
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES APRIL 23, 2019

AO 88 (Rev 12/13) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Connecticut

Eliyahu Mirlis *Plaintiff* v. Daniel Greer et al. *Defendant*	)	Civil Action No. 3:16-cv-00678 (MPS)

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION

To: Aviad Hack, 64 Sargent Ave., Providence, Rhode Island, 02906

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: United States Courthouse
450 Main Street
Hartford, Connecticut 06103

Courtroom No.: 2

Date and Time: 05/15/2017 10:00 am

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

See Attached Schedule A.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/09/2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendants, who issues or requests this subpoena, are:

David T. Grudberg, Esq., Carmody Torrance Sandak & Hennessey LLP, 195 Church Street, New Haven, CT 06509
email: dgrudberg@carmodylaw.com; tel: (203) 777-5501

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88 (Rev 12/13) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action (page 2)

Civil Action No. 3:16-cv-00678 (MPS)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Avind Hack

on *(date)* 5/5/17 .

☐ I served the subpoena by delivering a copy to the named person as follows:

on *(date)* ; or

☒ I returned the subpoena unexecuted because: Deponent Continually evaded service At P.O.E. called out sick for 2 weeks, Attempted at Multiple location, Multiple process Servers Attempted Service, hours of Surveillance

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

$.

My fees are $ 50.00 for travel and $ 650.00 for services, for a total of $ 750.00 .

I declare under penalty of perjury that this information is true.

Date: 5/17/17

Robert J Kilduff

Server's signature

Robert J Kilduff process Server

Printed name and title

87 Grand View Rd E. Greenwich, RI 02818

Server's address

Additional information regarding attempted service, etc.:

AO 88 (Rev 12/13) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Connecticut

ELIYAHU MIRLIS *Plaintiff* v. RABBI DANIEL GREER ET AL *Defendant*	)	Civil Action No. 16cv00678(MPS)

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION

To: AVIAD HACK
54 Sargent Avenue, Providence, RI 02906

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: United States District Court
450 Main Street, Hartford, CT

Courtroom No.: 217

Date and Time: 05/11/2017 10:00 am and every day thereafter until conclusion of trial

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 4-13-17

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Eliyahu Mirlis, who issues or requests this subpoena, are:

Antonio Ponvert III, Koskoff Koskoff & Bieder, 350 Fairfield Avenue, Bridgeport, CT06604 Tel. (203) 336-4421

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88 (Rev 12/13) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action (page 2)

Civil Action No. 16cv00678(MPS)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☒ I returned the subpoena unexecuted because: MR HACK WAS Avoiding service b Attorney office Cancelled Service .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ 100 for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 4/26/17

Kenneth M Vieira
Server's signature

Constable # 6196/170
Kenneth M Vieira
Printed name and title

PO Box 411 Ballouton RI 02806
Server's address

Additional information regarding attempted service, etc.: Continued on Reverse Side

4/25/17 11:39 AM NO A blue TAN Vehicle In driveway Left A note for MR HACK

4/27/17 6:12 PM SPOK w/ MR Hack wife would not give her name Told me MR HACK WAS AT Prayer when I ASKED her Questions She Kept saying "I CAN't Answer you OR that I Don't Know what I can say. Question WAS Did you give MR HACK my note I LEFT She Said he would Be home very Shortly give her A 2nd note. I WAITED out Side from 6:15 PM - 6:55 PM MR HACK never showed

JAS Informed By Attorneys Office they were going to serve MR HACK AT Court. & they spoke w/MR HACKS ATTorney. I WAS Instructed BY ATTY Ponvents' Secretary To Cancel SERVICE.

Kenneth M Vi

Constable # 6196/170
Kenneth M Vieira

AO 88 (Rev. 12/13) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Connecticut

ELIYAHU MIRLIS
Plaintiff
v.
RABBI DANIEL GREER ET AL
Defendant

Civil Action No. 16cv00678(MPS)

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION

To: AVIAD HACK
84 Sargent Avenue, Providence, RI 02906
(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: United States District Court
450 Main Street, Hartford, CT

Courtroom No.: 217

Date and Time: 05/11/2017 10:00 am and every day thereafter until conclusion of trial

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 5-1-17

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Eliyahu Mirl s, who issues or requests this subpoena, are:

Antonio Ponvert III, Koskoff Koskoff & Bieder, 350 Fairfield Avenue, Bridgeport, CT06604 Tel: (203) 336-4421

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88 (Rev. 12/13) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action (page 2)

Civil Action No. 16cv00678(MPS)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* AVIAD HACK

on *(date)* 5/9/2017

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

☒ I returned the subpoena unexecuted because: MR. HACK Avoiding Service.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____

My fees are $ _____ for travel and $ 100.00 for services, for a total of $ 100.00 .

I declare under penalty of perjury that this information is true.

Date: 5/9/2017

Kenneth M Vieira
Server's signature

Constable #6196/170
Kenneth M Vieira
Printed name and title

PO Box 411 Barrington RI 02806
Server's address 401-690-1996

Additional information regarding attempted service, etc.:

on 5/9/17 I ARRIVED At the Alvarez High School Providence RI where MR. HACK WORKS AS A TEACHER. I ARRIVED 9:50am 10am I WAS ASKED to signin. & the Principal would See me in 5 mins. I WAS greeted BY the Principal Aprox 10:25am. I TOLD her I needed to See MR HACK. The Principal left. 5 mins - 10 mins later She Returned Saying She COULD not FIND MR. HACK. I Went TO The Providence School Dept. & meet w/ Charles Ruggeiro. Deputy City Solicitor. MR. Ruggeiro TOLD me He WAS Informed BY the Principal MR HACK WOULD not meet with me.

AO 88 (Rev 12/13) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Connecticut

ELIYAHU MIRLIS *Plaintiff* v. RABBI DANIEL GREER ET AL *Defendant*	)	Civil Action No. 16cv00678(MPS)

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION

To: AVIAD HACK
34 Sargent Avenue, Providence, RI 02906

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: United States District Court
450 Main Street, Hartford, CT

Courtroom No.: 217

Date and Time: 05/11/2017 10:00 am and every day thereafter until conclusion of trial

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 5-1-17

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Eliyahu Mirlis, who issues or requests this subpoena, are:

Antonio Ponvert III, Koskoff Koskoff & Bieder, 350 Fairfield Avenue, Bridgeport, CT06604 Tel: (203) 336-4421

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88 (Rev 12/13) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action (page 2)

Civil Action No. 3:16-cv-00678 (MPS)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Alvad Heck.

on *(date)* 5/3/17 .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☒ I returned the subpoena unexecuted because: after watching the Front of the Office of Lynch, Traub Keefe + Errante, 52 Trumbull St, New Haven CT, for 2 1/2 hours, I was unable to make service on this witness.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ 0.00 .

My fees are $ 0.00 for travel and $ 0.00 for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 5/4/17

_____
Server's signature

Robert S Miller
Printed name and title

32 Elm Street, New Haven CT
Server's address

Additional information regarding attempted service, etc.:

EXHIBIT 4

AFFIDAVIT OF AVIAD S. HACK

STATE OF RHODE ISLAND)
) ss:
COUNTY OF Providence)

I, AVIAD S. HACK, hereby affirm under penalty of perjury and state as follows:

1. I am above 18 years of age, and believe in the obligations of an oath and affirmation.

2. I make this affidavit of my own free will. I have had the opportunity to consult with counsel and/or advisor(s) prior to the execution of this affidavit.

3. I am familiar with *EM*, who was a student at the Yeshiva of New Haven ("the Yeshiva") beginning in the fall of 2001, and continuing until his graduation in the spring of 2005. During those years, I served as the Assistant "Menahel" (Assistant Principal) at the Yeshiva.

4. I also served as the dorm counselor for *EM* and other high school boys enrolled at the school (approximately 8-12) from before *EM* became a student at the Yeshiva until August 2004, when I was married. I lived with the boys at 249 Ellsworth Avenue in New Haven. I observed and interacted with them regularly, and one of my responsibilities was to monitor their activity, including their comings and goings from the residence.

5. During this same time, Daniel Greer was the head of the Yeshiva. My general practice was to meet most nights with Rabbi Greer, typically at approximately 9:30 PM, to discuss matters relating to the Yeshiva, its activities in the neighborhood, and the students.

6. I am aware that *EM* brought a lawsuit against Daniel Greer and the Yeshiva, *EM* v. Greer, et al., 3:16-CV-678 (KAD), alleging that he was sexually abused by Daniel Greer while a student at the Yeshiva.

7. I gave deposition testimony in the *EM* v. Greer civil matter.

8. During my deposition sessions, I testified that I believed misconduct by Daniel Greer toward *EM* had occurred while the latter was a student at the Yeshiva. I stated that my belief was based on my own personal observation and interaction with *EM*, as well as statements that Daniel Greer made to me.

9. I was not specifically asked at my deposition whether any misconduct by Daniel Greer towards *EM* occurred prior to *EM* 16th birthday, which was in late October 2003.

10. I did not appear as a witness at the *EM* v. Greer civil trial, which occurred in May 2017. I successfully avoided efforts by counsel for all parties to serve me with papers requiring my appearance at trial.

11. I also did not appear as a witness in the criminal trial of this matter, in the fall of 2019. I successfully avoided attempts to serve me with papers. I did so because I did not want to appear as a witness and be involved in this case. That chapter of my life was traumatic for me and I was not then prepared to revisit it in a public forum with the possible attendant publicity.

12. I now wish to share my knowledge of the events relevant to this case, and am willing to testify as well in support of this affidavit.

13. Specifically, I affirm under penalty of perjury that, to my knowledge, no acts of misconduct by Daniel Greer toward *EM* occurred prior to *EM* 16th birthday. The first such act, to my memory, occurred in or about January 2004.

AFFIRMED UNDER PENALTY OF PERJURY THIS 29th DAY OF OCTOBER, 2021.

AVIAD S. HACK

Subscribed and affirmed before me this 29th day of October, 2021.

Notary Public

GREGORY LEMOI NOTARY PUBLIC STATE OF RHODE ISLAND COMM EXP. FEBRUARY 27, 2023